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August 4, 2003  
DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Date of Filing: December 12, 2002

Case Number: TSO-0013

This Opinion concerns the eligibility of XXXXXXXXXX (hereinafter referred to as "the individual") for an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1/</sup>

## **I. Background**

The individual is employed by a Department of Energy (DOE) contractor in a job that requires a security clearance. In the Spring of 2001, the local DOE security office received derogatory information about the individual. An investigation ensued, and the individual was interviewed by a DOE Personnel Security Specialist. After this Personnel Security Interview (PSI), the individual was referred to a local psychiatrist (hereinafter referred to as "the DOE psychiatrist") for an agency-sponsored evaluation. Upon reviewing the results of this investigation, the Manager of the local DOE Office determined that the doubts about the individual's eligibility for a clearance had not been resolved, and suspended the individual's access authorization. The Manager informed the individual of this determination in a letter which set forth in detail the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for a security clearance.

The individual requested a hearing on this matter. The Manager forwarded the individual's request to the Office of Hearings and Appeals and I was appointed the Hearing Officer. The hearing was convened near the individual's job site. Ten witnesses testified at the hearing. The principal of a local high school and the

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<sup>1/</sup> An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Opinion as access authorization or a security clearance.

DOE psychiatrist testified for the DOE and the individual, three co-workers, a psychiatrist, and the individual's mother, father and sister testified for the individual.

## **II. Statement of Derogatory Information**

As indicated above, the Notification Letter included a statement of derogatory information in possession of the DOE that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraph (I) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Paragraph (I) refers to information showing that the individual has engaged "in any unusual conduct or is subject to any circumstances which tend to show that [he] is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause [him] to act contrary to the best interests of national security. Such conduct or circumstances include, but are not limited to, criminal behavior . . . , or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility." Under this paragraph, the Letter refers to information indicating that the individual entered a high school in a nearby town where his then-estranged wife was working and then reportedly "made threatening remarks to either [his wife] or someone she was dating." He "made remarks to the effect that [he] had been to Vietnam and Desert Storm and that during [his] service there, [he] had killed people." The letter also cited unspecified reports indicating that the individual (i) had made comments that he might kill his ex-wife and himself; (ii) had to file for bankruptcy because of his ex-wife; (iii) was upset because his ex-wife was seeing younger men; (iv) had been placed on administrative leave by his part-time employer, a local sheriff's office, because the sheriff was concerned that there might be a confrontation between the individual and his ex-wife; (v) was "stalking" his ex-wife; and (vi), was a compulsive liar. The Letter also cited allegations that witnesses to this behavior "had been threatened to keep all of this quiet." The Letter then referred to information provided by the individual during his PSI, including statements that his ex-wife had taken his credit cards and accumulated approximately \$47,000 worth of debt without his knowledge, and that he "might have jokingly made threats against his ex-wife." Finally, the Letter cited the findings of the DOE psychiatrist that the individual suffers from *pseudologica fantastica*, or pathological lying. He concluded that the individual "is not trustworthy and he showed poor judgement and reliability in his meeting with me."

## **III. Findings of Fact and Analysis**

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all the relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether restoring the individual's security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding his conduct; the

frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE Personnel Security Hearing is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the individual must then produce evidence sufficient to convince the DOE that restoring his access authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. After careful consideration of the factors mentioned above and of all the evidence in the record in this proceeding, I find that the individual has failed to make this showing, and that his security clearance should not be restored at this time.

At the hearing, the individual attempted to show that he had recently undergone a particularly unpleasant and contentious divorce, and that most of the allegations against him in the Notification Letter are false and were made by his ex-wife in an attempt to get him fired. He also took issue with the DOE psychiatrist’s diagnosis.

The individual testified that he married in 1990 and that his divorce became final in June of 2002. He characterized the divorce as “terrible.” Hearing Transcript (Tr.) at 51. He then discussed the allegations set forth in the Notification Letter. The individual acknowledged having visited the local high school, but denied telling the principal that he had served in Vietnam or Desert Storm. He further stated that he never directly threaten his ex-wife, nor did he ever threaten to kill himself. Tr. at 53. Regarding his employment status with the local sheriff’s office, he testified that he had been terminated as an auxiliary deputy without being officially informed as to the reason for the move. However, he said that “a few of [his] deputy friends” informed him that the reason was that his ex-wife was calling the sheriff “between 15 and 16 times a day.” Tr. at 54. His ex-wife would call in domestic violence complaints against him without just cause, the individual stated, and added that he had never been arrested for, or charged with, domestic violence. Tr. at 55.

The individual’s psychiatrist then testified. He stated that, after interviewing the individual and reviewing the transcript of the PSI and other documents from the individual’s personnel security file, he concluded that the individual suffered from an “Adjustment Disorder.” According to the Diagnostic and Statistical Manual of Mental Disorders, Volume IV, Text Revision (DSM-IV), he testified, this Disorder is characterized by “the development of emotional or behavioral symptoms in response to an identifiable stressor or stressors.” Tr. at 83. The second criterion, he continued, is that “the symptoms or behaviors are significant as evidenced by either marked distress that is in excess of what would be expected, or significant impairment in social or occupational functioning.” *Id.* He further stated that it is a “temporary condition,” Tr. at 81, and that the stressor that led to this disorder was “the combination of marital discord and discovery of potential

marital infidelity.” Tr. at 83. The individual no longer suffers from this disorder, the individual’s psychiatrist testified, nor does he have any other mental disease or defect which would adversely affect his judgement or reliability. Tr. at 86, 87. He specifically disagreed with the DOE psychiatrist’s diagnosis of *psuedologica fantastica*, because such a finding would require a long term pattern of lying by the individual, which he could not discern from his evaluation. Tr. at 91.

The individual’s three co-workers then testified. They each said that the individual was an honest man and a good employee, and that he had performed his duties admirably during his difficult divorce. The individual’s parents and sister attested to the individual’s honesty, and his mother and sister stated that, during a domestic dispute, the individual’s ex-wife threatened to take whatever measures she could to have the individual fired. Tr. at 122, 127.

After hearing the individual’s witnesses testify, the DOE psychiatrist withdrew his diagnosis of *psuedologica fantastica*, Tr. at 139, explaining that “a person with *psuedologica* will tell rather fantastic heroic things on the job. I didn’t hear any of this. I didn’t even hear of a suggestion of this from his co-workers who might have said, ‘Having believed him, there was a time when . . .’ and so on and so on and so on. I didn’t hear any of that.” Tr. at 137. 2/

After reviewing this testimony and the exhibits submitted by the parties, I find no support in the record for several of the allegations made in the Notification Letter. Specifically, there was no evidence introduced that the individual was “stalking” his ex-wife, that he threatened suicide, or that he directly threatened either witnesses to his conduct, his ex-wife, or anyone she was dating. Furthermore, the only evidence that he made comments that he might kill his ex-wife came from the individual himself, when he testified that he had “jokingly” made such comments to “the guys in the locker room.” Tr. at 70. To the extent that the reports of these alleged activities and statements originated from the individual’s ex-wife, they are especially suspect, given the bitterness of the divorce and the testimony of the individual’s mother and sister that the ex-wife swore that she would have the individual fired.

However, despite the testimony of the individual’s witnesses and the DOE psychiatrist’s withdrawal of his diagnosis, I harbor serious doubts about the individual’s honesty and trustworthiness. The reasons for these doubts are set forth below.

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2/ The DOE psychiatrist, did not, however, agree with the individual’s psychiatrist’s diagnosis of an adjustment disorder, stating that this is caused by “stress in excess of what one would expect in a situation. I haven’t seen anything distressful in excess. We have heard testimony after testimony that his [job] performance was fine. There wasn’t a ripple.” Tr. at 133-134. He also testified that he did not believe the individual had been completely honest with him, Tr. at 140, and that, in any event, it was not usually a feature of an adjustment disorder to lie. Tr. at 136.

At the hearing, the individual was asked about a statement that he had made during the PSI to the effect that he may have “jokingly” made some threats against his wife.

A. . . . I mean, around the guys in the locker room, saying - excuse my French - “I should just kill the bitch.” I mean, you know, its just - you don’t mean nothing of it. It’s just like venting, blowing steam, you know.

Q. Okay. is that something you did often or -

A. No.

Q. But you did make those kinds of statements?

A. Yes, jokingly.

However, one of the individual’s co-workers, who testified that his locker was “right across from” the individual’s, said that

A. Well, yeah, I have heard him make threats against - you know, upset with his wife.

Q. What did he say?

A. He said he didn’t like her and doesn’t want to be around her and he wouldn’t think nothing about maybe punching her in the nose or something like that.

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Q. What was his demeanor?

A. He was upset. . . .

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Q. So he didn’t . . . say this in a joking manner? He was upset?

A. Yeah, he was upset.

Tr. at 106-109. The co-worker emphasized that the individual is not a violent person, and that he did not believe that the individual would actually attack his ex-wife. Tr. at 109.

Furthermore, during the PSI, the individual discussed an incident that occurred when he was dropping off their children at his ex-wife’s house. He said that his children were on the porch crying, and his ex-wife came out of her house with a cell phone in her hand. An exchange between the ex-wife and the individual about the reason for the crying then ensued, with the individual leaning against his car at the curb, “almost 1,000 meters away.” PSI at 13. Because of this distance, the individual added, he had to raise his voice in order to be heard. *Id.* His ex-wife then called the local police, and they “send two cruisers . . . for Domestic Violence.” *Id.* When the police arrived, the individual stated, he had a conversation with one of the officers, who told him that his ex-wife had said, ‘When [the individual] raises his voice to her, she has to call the cops.’ PSI at 14. He then allegedly told the officer, “Look, you knew where I was. My car’s at the curb. I was almost 1,000 meters away . . . from her . . . .” He said that the officer replied “Yeh, I know,” and “You had to raise your voice.” *Id.* One thousand meters is equal to a distance of over 3,000

feet, or almost two-thirds of a mile. <sup>3/</sup> Nevertheless, at the hearing the individual testified that the distance from the curb, where he was standing, to the porch, where his ex-wife was, was “just a little longer than the length of” the hearing room, which was approximately 30 to 40 feet. Tr. at 59.

Also, the local high school principal testified about the conversation that he had with the individual at the school. He said that the individual was there to inform him that the school’s choir instructor was having an affair with his then-wife. He told the principal that he had “hired a private investigator and had pictures of them together . . . at [the school], one where they were making out on a couch in his office and the other where he had . . . his hand on her bottom walking down the hall” Tr. at 10. <sup>4/</sup> Later in the conversation, the principal stated, the individual told him that he had been well trained in the military in the use of weapons, and that “he had served in Desert Storm.” Tr. at 10-11.

In contrast, when asked at the hearing whether he had told the principal that he had hired a private investigator, the individual replied

A. I think I did.

Q. And that this person had photographs of [the individual’s ex-wife]?

A. I don’t recall the photographs.

Q. Okay. Had you hired a private detective?

A. No, sir, I hadn’t.

Tr. at 68. The individual also denied having told the principal that he had served in Desert Storm. Tr. at 53, 69.

Finally, during the DOE psychiatrist’s evaluation, which took place over one year after the individual’s conversation with the principal, the individual made a statement that is inconsistent with the belief he expressed during that conversation that his wife and the choir instructor were having an affair. According to the DOE psychiatrist’s Report, the individual discussed an incident that occurred at a local fair, at which he allegedly observed another man (not the choir instructor at the local high school) embracing and kissing his wife, and placing his hands on her breasts and buttocks. Report at 1. The DOE psychiatrist asked if there had been any other misbehavior on his wife’s part. After “a very long pause,” the individual mentioned two separate instances in which his wife allegedly threatened suicide. Report at 2. Again, the DOE psychiatrist inquired as to whether there had been any additional misbehavior, and “again there was a very long pause.” *Id.* The individual then said that his wife told their pastor that the individual was threatening to kill himself. The DOE psychiatrist pursued his

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<sup>3/</sup> 1 meter = 3.281 feet x 1,000 = 3,281 feet.

<sup>4/</sup> The individual did not show these, or any other photographs, to the principal. Tr. at 10.

quest for any other misbehavior on his wife's part. None were forthcoming. Finally, I referred back to [the man who was allegedly fondling his wife at the fair] and he said that he never suspected that she went out with or had a relationship with any other man. After a pause he added, "She did work with a gay choir director in high school. *I never thought they had a relationship.*"

*Id.* (italics added). The DOE psychiatrist, who had reviewed the individual's security file and was therefore aware of his earlier meeting at the principal's office and the statements that he made there, considered this inconsistency and other statements made by the individual to be evidence of deception, and concluded that "he is not trustworthy and he showed poor judgement and reliability in his meeting with me." *Id.*

Much of the information upon which the DOE relies in making security clearance determinations is obtained from the prospective or actual clearance holders themselves through PSIs and questionnaires. Accordingly, it is of the utmost importance that the people who provide this information be honest, reliable and trustworthy. Given the falsehoods and inconsistencies described in this Decision, I do not believe that the individual meets this standard. I therefore conclude that the individual has not successfully addressed the DOE's security concerns under paragraph (l).

#### **IV. Conclusion**

As explained in this Decision, I find that the individual has not presented evidence that is sufficient to mitigate the DOE's security concerns. Based on the record in this proceeding, I am therefore unable to conclude that restoring the individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored.

Robert B. Palmer  
Hearing Officer  
Office of Hearings and Appeals

Date: August 4, 2003

